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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,089	09/10/2001	Todd A. Thompson	9345.17121-CON 1	1589

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EXAMINER
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SMITH, RUTH S

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 06/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/883,089	<b>Applicant(s)</b> THOMPSON ET AL.	
	<b>Examiner</b> Ruth S. Smith	<b>Art Unit</b> 3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2006 and 14 April 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/06, 5/06</u> | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 17, 2006 has been entered.

***Election/Restrictions***

Newly submitted claim 16 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the apparatus can be used to practice a method that does not include applying a separate treatment device alongside the housing during use.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 16 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Objections***

Claims 5, 13 are objected to because of the following informalities: Claims 5 and 13 are inconsistent with the limitations set forth in claim 1. The species which includes the strap assembly comprising a halter is shown in figure 5,8. The species which shows an elongated housing is shown in figure 8. These species fail to show a strap assembly affixed to the inferior and/or superior edge portions and having no components affixed to the lateral side portions. As clearly seen in figures 5,8, the strap assembly includes components affixed to a location closer to the lateral side portions than the inferior portion. In claim 13, line 2 appears to be grammatically incorrect. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5,7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talish et al ('070) in view of Peterson et al. Talish et al disclose a system for applying ultrasound to the thoracic cavity of a patient comprising a housing 14,16, an ultrasound transducer positioned within the ultrasound housing 16 and an assembly including straps 20 to stabilize placement of the housing on the chest of the patient. The assembly includes a quick release mechanism as seen at the end of straps 20 in figure 1 and a quick release material as seen by the VELCRO in figure 5. As seen in figure 1, the assembly can include a halter worn about the chest and shoulders. The strap assembly is substantially free of components affixed to the lateral side portion of the assembly. If the device were to be placed upon a very large patient, the chest of the patient, on the lateral side portions of the housing, would be substantially uncovered and bare. Furthermore, Talish et al disclose, in column 9, that various modifications can be made to the structural configuration of the placement module. Such modifications would have been an obvious design choice based upon many factors such as where the

module is positioned and whether other testing is to be performed simultaneously therewith. The placement module includes components that are worn about the back that leave the chest on opposing sides of the housing uncovered which would allow placement of another treatment device on the chest. Talish et al fails to specifically disclose the operating parameters of the ultrasound energy or the use of a circulating fluid. Peterson et al is just one example of many which disclose the operating parameters of the therapeutic ultrasound as set forth in claim 1. The application of ultrasound at the levels provided would inherently result in the increase of blood flow. It would have been obvious to one skilled in the art to have modified Talish et al such that the operating parameters are as taught by Peterson et al in that such are well known operating parameters for therapeutic ultrasound which will not cause harm to the patient. With respect to claim 3, the use of hook and loop fasteners are old and well known in the art as quick release mechanisms. It would have been obvious to one skilled in the art to have modified Talish et al such that the mechanism used on straps 20 is replaced with a quick release material. Such a modification merely involves the substitution of one well known type of quick release mechanism for another. With respect to claims 4,5, in the absence of any showing of criticality, the specific arrangement of the assembly to provide stabilization of the housing would have been an obvious design choice of known functional equivalents in the art, particularly in view of Talish et al disclosing that various modifications can be made to the structural configuration of the placement module. With respect to claims 7-9, it is known to use a coupling agent to couple the ultrasound into the body without attenuation caused by it passing through air. It is well known to use circulating water as this agent as seen in Peterson et al. Therefore, it would have been obvious to one skilled in the art to have modified Talish et al such that the gel is replaced by circulating water as the coupling agent. Such a modification merely involves the substitution of one well known type of coupling agent for another. With respect to claims 10-12, Talish et al shows various arrangements for the housing which includes all of the limitations set forth. With respect to claim 13, Talish et al disclose, in column 9, that various modifications can be made to the structural configuration of the placement module and in the absence of any showing

of unexpected results, the specific shape used for the housing would have been a matter of design choice of known equivalents in the art.

### ***Response to Arguments***

Applicant's arguments filed March 17, 2006 have been fully considered but they are not persuasive. With respect to the comments regarding the device of Talish et al not leaving the chest on the sides of the housing bare, if the device were to be placed upon a very large patient, the chest of the patient, on the lateral side portions of the housing, would be substantially uncovered and bare. Furthermore, Talish et al disclose, in column 9, that various modifications can be made to the structural configuration of the placement module. Such modifications would have been an obvious design choice based upon many factors such as where the module is positioned and whether other testing is to be performed simultaneously therewith.

### ***Conclusion***


All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth S. Smith whose telephone number is 571-272-4745. The examiner can normally be reached on M-F 7:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ruth S. Smith  
Primary Examiner  
Art Unit 3737

RSS